Howard S. Weitzman
Comptroller

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March 29, 2006

Hon. Thomas R. Suozzi
Nassau County Executive
1 West Street
Mineola, NY 11501

Dear County Executive Suozzi:

I am pleased to enclose the review performed by my staff of the County's estimated liability for real estate tax refunds. The County's outside auditors, Deloitte & Touche, have completed their review of the estimate as well. We found that the backlog of certiorari liability was approximately $131 million as of December 31, 2005. This compares favorably to our finding the backlog was approximately $310 as of December 31, 2004.

Our audit has found that Nassau County has finally reduced its mountain of real estate tax refund claims to a reasonable level. As a result, the county will be able to stop borrowing every year to pay real estate tax refunds, a major cause of its fiscal crisis.

By achieving the ability to 'pay as we go' for refunds, the county has weaned itself from a bad debt habit that was draining it of hundreds of millions of dollars – funds that we desperately need to provide the services that county residents expect and to keep county tax rates from going up.

Reducing the County's real estate tax liability has been a cornerstone of the County's plans for fiscal recovery since 2002. Under the NIFA Act, the County was required to effectively end the practice of borrowing to pay real estate tax refunds by 2006. The reduction of refund liability to $131 million reflects the County's success in reducing the backlog to a level where the county can reasonably plan to pay refunds without borrowing.

My audit report finds that the reduction in liability is due to two factors: an aggressive project to pay off certiorari refunds last year while the County could still use borrowed funds for that purpose under the NIFA Act; and, more importantly, the decrease in new liability for property tax refunds. By increasing the accuracy of assessment rolls, the County will be able to keep its liability for real estate tax refunds low without raising the amount it has to pay out each year.

As our report notes, the decline in new liability has occurred because of a number of structural, legal and administrative changes:

- Under the 2003 ARC reform legislation enacted by the State, ARC now has a full year to review tax grievances and make reductions before the final assessment roll is established, allowing ARC to correct assessments without creating additional refund liability;
- the five-year phase-in period for increases in commercial properties' assessed value, which translates into smaller refunds in the event a refund is due; and
- annual updates of the assessment roll, which tend to increase the accuracy of assessments, resulting in fewer challenges.

Taken together, these actions have allowed the county to fulfill the promise of its multi-year fiscal plan and transition to a pay-as-you-go system for property tax refunds instead of borrowing and adding more debt onto the shoulders of our children and grandchildren. I believe this is a splendid achievement that bodes well for the future financial stability of Nassau County.

Very truly yours,

Howard S. Weitzman
Nassau County Comptroller

HSW:GMCG

cc: Glenn Borin, Chairperson of Assessment Review
William Cunningham, Deputy County Executive
Thomas Stokes, Deputy County Executive
Arda Nazerian, Chief of Staff
Mark Young, Budget Director
Eric Naughton, Director of Legislative Budget Review
Richard Luke, Executive Director of NIFA
Joseph Calderone, Press Secretary

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To: **Howard Weitzman**
Nassau County Comptroller

From: **Bruce G. Kubart**
Deputy Field Audit Director

Date: **March 29, 2006**

Re: **Review of ARC's Liability Estimate December 31, 2005**

The Comptroller's Office has completed its review of the Assessment Review Commission's ("ARC") Estimate of the Real Estate Tax Refund Liability as of December 31, 2005. Based upon the information we reviewed and the documentation provided by ARC, we determined that the estimate of Nassau County's real estate tax refund liability at approximately $131 million is reasonable. See Appendix. In contrast, the Comptroller's Office had estimated that real estate tax liability stood at $310 million as of December 31, 2004.

The Comptroller's Office understands that the $131 million comprises liability for challenges to the accuracy of assessments and for petitions filed for the correction of errors. Consistent with prior years, it does not include potential liability arising out of litigation challenging the validity of taxes, including those actions brought against the county by utilities with regards to special district taxes.

This year's estimated liability of $131 million is a significant reduction from last year's estimate of $310 million. The majority of the decrease in the liability can be attributed to refunds and adjustments totaling $250 million made in 2005. These refunds included $54 million in payments to an escrow account under the Refunds Without Settlement initiative. Another area in which there was a significant liability reduction from the 2004 estimate was in the "current year" commercial properties. The 2004 estimate indicated that there was $75.4 million in liability related to commercial properties in Class IV for then "current year" of 2004/05. The 2005 estimate showed the "current year" (2005/06) liability as $23.6 million. The reasons for the reduction in the "current year" commercial liability are detailed below:

- *Roll Reductions:* Starting with the 2005/06 tax year, ARC had an entire year to review tax grievances and make reductions on the assessment roll before the final roll was established. The additional time allowed ARC to make more reductions without creating refund liability for the county.
- *Transition Assessments:* Starting with the 2005/06 tax year increases in a commercial property's assessed value has to be phased in over a five year period. A result of this phase in is that any reduction in the overall assessed value granted by ARC does not result in a refund based on the entire amount of the reduction.
- *Second Revaluation:* The assessed values for the 2005/06 tax year were based on the second revaluation. ARC has informed us that they found the accuracy of assessments increased over the first revaluation roll resulting in lower refund liability.
- *Refunds Without Settlements:* Included in the $54 million payment into escrow was $8.5 million related to 2005/06 school taxes. Although there were no settlements, the deposit represents a reduction in the current year liability. It should be noted that current year general taxes were not included because at the time of the deposit the general tax rates had not yet been set.

The estimate for 2005 incorporates a methodology in which both parties are in agreement. The 2005 estimate includes a larger sample of properties than in previous years, and includes actual estimated liabilities for all 39,700 writs involving 11,792 properties which were reviewed by ARC and contained in the ACT[1] or protest files, regardless of whether a settlement was completed or a reduction granted. These properties were then used to develop projected reductions for all properties that were not examined by ARC.

In reviewing ARC's Estimate of the Tax Refund Liability for December 31, 2005, the Comptroller's Office examined information provided by ARC including Excel files and an Access Database. In addition, the Comptroller's Office examined information in the County's POEMS[2] system and the ACT system. The examination was broken down into categories provided by ARC based upon the nature of the liability. These categories included: Settled Not Paid; Refunds Without Settlements; General Tax 05/06; Projected Writs; Small Claims Assessment Review (SCAR); Petitions; and Public Utilities. Brief descriptions of each category, our verification process, and any differences or adjustments in the liability for each category are discussed below:

Settled Not Paid - ($4.8million)

These are properties in which either ARC or the County Attorney's Office and the taxpayer have settled on a refund; however the payment has not yet been made to the taxpayer. Since the payment had not been made, the liability was still open at year end. The Comptroller's Office selected several properties at random from files provided by ARC to verify the information. In the examination of the properties the information on the schedule for the property such as old assessed values, new assessed values (including total assessed values, school taxable values, and general taxable values) were reviewed. The reductions in the assessed value were compared to the information recorded in the POEMS and ACT systems. Additionally, the totals listed on the schedules were verified. The Comptroller's Office also reviewed a stipulation of settlement for $1.8 million with the New York Racing Association.

[1] Assessment Complaint Tracking System
[2] County Assessor's Office Property History Database

We concur with ARC's estimate for these properties.

Refunds Without Settlements General Tax 05/06 – ($4.7 million)

These properties are those in which ARC determined reductions were due for the 05/06 tax year and deposited refunds into an escrow account for the 05/06 school taxes under the Refunds Without Settlements program. As previously mentioned, this initiative did not include 2005/06 general taxes because the tax rates were unknown. The county is still responsible for the 2005/06 general tax refunds on these properties. Again, the Comptroller's Office randomly selected properties for review from the Excel file that was provided by ARC. The same tests that were performed for the Settled Not Paid Properties were performed on these properties.

We concur with ARC's estimate for these refunds.

Projected Writs- ($81.6 million)

Taxpayers have filed for a reduction in assessed value on these properties, but a settlement regarding the reduction has not yet been completed. These are properties in Class I, II, and IV, excluding utilities. ARC originally calculated the open writ liability as of December 31, 2005 as being $75.3 million. However based upon the Comptroller's Office review, we estimated liability for the Projected Writs is $81.6 million. The increase was primarily based on a change in the formula used to calculate the refund liability for properties that were not reviewed by ARC.

ARC developed a formula to be applied to all properties that ARC did not review in order to project a refund liability. The formula was developed on the assumption that those properties not reviewed are homogeneous to those properties that were reviewed. The formula was based upon the history of properties that were examined by ARC and posted into the ACT system. In reviewing this formula, the Comptroller's Office noted that it was based upon 30,000 writs; however a database provided by ARC for the calculation of the open writ liability indicated that there were 37,000 writs examined by ARC in the open writ database. Upon notification of this discrepancy, ARC re-examined the formula and generated a new formula that was based upon 51,582 properties, both settled and unsettled. A comparison of the number of properties used in this formula to other information obtained from ARC showed that this was a more accurate representation of the properties examined by ARC.

Another issue that resulted in a minor change in the estimate of liability for the open writs was a change in the transitional assessment exemption factor. This affected the liability for the 05/06 tax year for Class II and Class IV properties. According to the Real Property Tax Law, increases in assessed values have to be phased in over a five year period, which results in taxable assessed values that are lower than the overall assessed values. As a result, a reduction in the assessed values does not result in a reduction of the same amount in the taxable assessed values. ARC originally estimated that reductions in the assessed values for the 05/06 tax year only resulted in a refund based upon 77% of the reduction in the overall assessed value. This amount was reviewed by the Comptroller's Office based on an Excel file of settlements in 2005. ARC re-examined this percentage when it reviewed the formula above and determined that this percentage should actually be 73%. The Comptroller's Office did not review this new calculation because it was determined that this change in the percentage did not have a material affect on the overall liability estimate of $131 million.

In order to determine if ARC's estimate of the open writ liability was reasonable the Comptroller's Office reviewed documentation provided by ARC which included an Access database of all open writs, the POEMS system, the ACT system, and other files. The Comptroller's Office selected a random sample of properties where the Access database indicated the property was reviewed by ARC and verified the information listed in the database to the POEMS system and the ACT system. Additionally, the Comptroller's Office recalculated the overall refund liability on the properties that were not examined by ARC using the adjusted formula, average tax rates, and the interest factor for the appropriate tax year.

The Comptroller's Office concurs with the liability estimate after ARC made corrections due to the items discussed above.

SCAR – ($25.5 million)

SCAR claims are exclusively residential properties. ARC provided Excel files that listed the properties that were settled or denied at hearing or were reviewed by ARC. The information such as the assessed values and reductions in assessed values of randomly selected properties on the schedules was compared to the information in the County's POEMS system. In total, ARC estimated the SCAR liability as being approximately $25.5 million, which is a reduction from $29.3 million from the estimated SCAR liability in 2004.

We concur with the liability estimated by ARC for these properties.

Petitions ($0.9 million)

These are properties in which there is a dispute regarding tax exemptions or whether the property is taxable. The majority of the liability attached to these properties concern veteran's exemptions. There was a mass petition of 1,607 properties in which the veteran's exemptions were not correctly calculated. ARC estimated that each property will receive a refund of approximately $500 each, or $800,000 in total. Based upon a limited examination of randomly selected properties, the Comptroller's Office determined that the average refund was approximately $235 per property, which is a liability of $377,000.

Although there was a discrepancy between the average amounts of the refunds which resulted in a difference of approximately $423,000 in liability, we deemed the difference immaterial in relation to the $131 million liability and did not make an adjustment.

Public Utilities ($13.6 million)

These properties are those owned by public utilities and may be listed as either Class 3 or Class 4 properties. These properties are unique when compared to all of the other properties in which tax refunds may be due. ARC provided an Excel file which listed the assessed values and a corrected assessed value for each property with open writs. The total amount of liability associated with these properties for 2005 was approximately $13.6 million. The 2004 estimate for the Public Utilities properties was $13.2 million. Included in the 2005 estimate were payments of $2.5 million to Keyspan for a settlement and $6.5 million for proposed settlements. We did not perform any audit work on this component and accepted ARC's liability estimate.

TAX CERTIORARI REFUND LIABILITY
December 31, 2005
$ in Millions

	Total Liability	Liability Created From 2005/06 Roll	Liability Created From Earlier Years
Unresolved Tax Grievances	81.6	20.3	61.2
Homeowner's Small Claims	25.5	24.2	1.3
Utility Property Claims	13.6	0.6	13.0
Resolved, but Unpaid Claims	4.8	2.3	2.5
General Tax Refunds Due on Escrow Program	4.7	4.6	0.1
Claims for Veteran's Exemptions	0.9	0.8	0.1
	131.1	52.9	78.2